brought an action for damages against the defendant for the amount she would have received under the original policy. *Held,* the plaintiff can recover. *Mitchell* v. *Langley* (Ga.), 85 S. E. 1050.

Where the insured is in such a mental condition at the time of changing the beneficiary that he is incapable of making a contract, the change is void and the original beneficiary is entitled to the money under the policy. *Cason* v. *Owens,* 100 Ga. 142, 28 S. E. 75; *Sovereign Camp Woodmen of the World* v. *Wood,* 114 Mo. App. 471, 89 S. W. 891. So, also, where the insured's mind is impaired to such a degree that he is incapable of transacting any business that requires the exercise of judgment and discretion. *Offil* v. *Supreme Lodge Knights of Honor,* 101 Tenn. 16, 46 S. W. 758. But, where the insured is of sound mind, the original beneficiary, having no vested interest in the policy cannot collect its proceeds from the new beneficiary, even though fraud and undue influence are practiced. *Hoeft* v. *Supreme Lodge Knights of Honor,* 113 Cal. 91, 45 Pac. 185, 33 L. R. A. 174. *Contra,* see 4 COOLEY, INSURANCE, 3775.

It will be observed that these cases are suits in equity to annul the act of naming a new beneficiary, so that the original one can claim the proceeds under the policy; while the principal case is an action at law for damages. This appears to be the first time an action at law for damages has been brought under an insurance policy in a case of this kind. But the fact that an action is new and without precedent is not conclusive against the plaintiff's recovery, if he is shown to have suffered a wrong. *Kujeck* v. *Goldman,* 150 N. Y. 176, 44 N. E. 773, 55 Am. St. Rep. 670, 34 L. R. A. 156. It is settled that if a person is deprived of a benefit which he would have received had it not been for the fraudulent and unlawful interference of a third party, he is entitled to recover from the third party, where the fraudulent representation was the proximate cause of his loss. *Angle* v. *Chicago, etc., Ry. Co.,* 151 U. S. 1; *Moran* v. *Dunphy,* 177 Mass. 485, 59 N. E. 125, 83 Am. St. Rep. 289, 52 L. R. A. 115; *Rice* v. *Manley,* 66 N. Y. 82, 23 Am. Rep. 30. Consequently the decision of the principal case seems sound.

MASTER AND SERVANT—LIABILITY FOR INJURIES—CONFORMITY TO CUSTOMARY USAGE.—The plaintiff, an employee, was injured as a result of his clothing being caught by a setscrew which protected about an inch above the surface of a collar on a swiftly revolving piece of machinery. In an action, for damages for the negligence of the employer the fact of customary usage was set up as a defense. *Held,* proof of customary usage is not conclusive of the employer's nonliability. *Sanford-Day Iron Works* v. *Moore* (Tenn.), 179 S. W. 373.

The universal doctrine is that an employer does not owe the employee the duty of furnishing the safest or best known appliances. He performs his duty when he furnishes reasonably safe appliances. *Keith* v. *Granite Mills,* 126 Mass. 90; *Burke* v. *Witherbee,* 98 N. Y. 562; *Fenderson* v. *Atlantic City Ry. Co.,* 56 N. J. L. 708, 31 Atl. 767. There is conflict, however, as to what weight the common usage of an appliance bears to its reasonable safeness. Some courts maintain the doctrine that the employer owes the employee the duty of furnishing appliances

of an ordinary character and reasonable safety and that the former is the test of the latter, thus making ordinary, or common use conclusive of the employer's nonliability. *Titus* v. *Bradford, B. & K. Ry. Co.,* 136 Pa. St. 618, 20 Atl. 517, 20 Am. St. Rep. 944; *Ford* v. *Mt. Tom Sulphite Pulp Co.,* 172 Mass. 554, 52 N. E. 1065, 48 L. R. A. 96.

According to some of the best considered decisions, however, proof of the common use of an appliance is held to be prima facie proof, only, of the nonliability of the employer, and capable of being rebutted by the proof of the dangerous character of the appliance. *Prattville Cotton Mills* v. *McKinney,* 178 Ala. 554, 59 South. 498; *Winkler* v. *Power & Mining Machinery Co.,* 141 Wis. 244, 124 N. W. 273; *Geno* v. *Fall Mountain Paper Co.,* 68 Vt. 568, 35 Atl. 475. See *Wabash Ry. Co.* v. *McDaniels,* 107 U. S. 454. The ground for this view is that many well regulated plants do not use due or proper diligence in regard to every appliance in the plant, and for this reason proof of customary use should not raise a conclusive presumption that any particular appliance is reasonably safe. On principal, it would seem that the view of the principal case is sound, and that proof of the common use of an appliance should be strong prima facie evidence of the employer's nonliability, to be rebutted only by the clearest proof of its dangerous character. See *Going* v. *Alabama Steel & Wire Co.,* 141 Ala. 537, 37 South. 784.

MUNICIPAL CORPORATIONS—POLICE POWERS—REGULATION OF BILL-BOARDS.—A city ordinance provided that any person who allowed any advertisement of liquor to be displayed on his property should be deemed guilty of suffering a nuisance to exist. *Held,* the ordinance is invalid. *Haskell* v. *Howard* (Ill.), 109 N. E. 992. For principles involved, see 2 VA. L. REV. 72.

NEGLIGENCE—NEGLIGENCE OF HUSBAND AS IMPUTED TO WIFE.—The plaintiff's intestate was killed in a collision with defendant's train, while riding in a vehicle driven by her husband. *Held,* the husband's negligence will not be imputed to the wife. *Chicago & E. R. Co.* v. *Biddinger* (Ill.), 109 N. E. 953. For discussion of the principles involved, see 1 VA. L. REV. 252.

PAYMENT—RECOVERY OF PAYMENT MADE UNDER DURESS.—As a condition precedent to the obtaining of a liquor license an illegal fee was exacted from the plaintiff. The loss of the license would have occasioned great depreciation in the value of the plaintiff's property. Had he been entitled to the license, the plaintiff could have obtained the same by legal proceedings. *Held,* there can be no recovery. *Baldwin* v. *Village of Chesaning* (Mich.), 154 N. W. 84. See NOTES, p. 309.

POWERS—NON-EXCLUSIVE POWER—ILLUSORY APPOINTMENT.—A beneficiary under a will was given certain property which, upon his death, should be distributed as he might direct by his last will to his wife and heirs at law. The donee of this power, by will, appointed a sum of $147,000 to his widow, and only $1,000 to his heirs at law. *Held,* the appoint-